



John B. McEntire, IV
Senior Litigator
10 North Post Street, Suite 700
Spokane, Washington 99201
509.624.7606
Attorney for James D. Cloud

United States District Court
Eastern District of Washington
Honorable Salvador Mendoza, Jr.

United States of America,

Plaintiff,

v.

James Dean Cloud,

Defendant.

No. 1:19-CR-2032-SMJ-1

Unopposed¹ Motion for Access to
Grand Jury Selection Records
and Materials for Spokane
Division

Yakima—Without Argument

December 31, 2020 – 6:30 p.m.

¹ The United States does not oppose James Cloud's request.

1 On February 2020, a Yakima-based grand jury (Jury Division B) returned a
2 Second Superseding Indictment, charging James Cloud with carjacking, kidnapping,
3 assault, firearm offenses, and first-degree murder.² Given charges' gravity, James
4 Cloud hired an expert to assess whether this grand jury was drawn from a fair
5 cross-section of the community, a right afforded to him under both statute and the
6 Constitution.

7 As part of this assessment, James Cloud asked the Court to access 27
8 categories of records from the Yakima grand jury.³ The Court granted James
9 Cloud's request in large part, directing the Clerk's Office to produce 25 categories
10 of records.⁴

11 The only two categories the Court denied involved requests for Covid-19
12 related records (i.e., policies, procedures, and Court orders entered due to the
13 Covid-19 pandemic). The Court denied these requests on ripeness grounds—that is,
14 the Yakima grand jury returned an indictment *before* the pandemic (February 2020).
15 In its Order, the Court noted these requests “would presumably be relevant”⁵ if a
16 grand jury returned a superseding indictment *during* the pandemic.

17
18 ² ECF No. 132 (Second Superseding Indictment).

19 ³ ECF No. 179 (Motion for Access to Grand Jury Selection Records and Materials).

⁴ ECF No. 184 (Order).

⁵ ECF No. 184 at 3 (Order).

1 That day has come.

2 On November 17, 2020, a Spokane-based grand jury returned a Third
3 Superseding Indictment,⁶ making James Cloud's previously unripe requests for
4 Covid-19-related records timely.

5 Besides Covid-19-related records, James Cloud needs access to a few other
6 categories of records based on unusual circumstances—namely, which grand jury
7 returned this latest indictment. The United States obtained the Third Superseding
8 Indictment from Spokane, which falls in Jury Division A, and consists of different
9 grand jurors than Jury Division B.

10 In terms of what categories of records James Cloud seeks, the answer is
11 simple: nothing new. Each category of record James Cloud seeks is a category the
12 Court already directed the Clerk's Office to produce in the last request.

13 Besides the record requests being nothing new, they are also narrower than
14 before—by a lot. The reason for the narrowed request is attributed the Clerk's
15 Office's thoroughness. When it disclosed the Yakima-based records, it provided
16 many records that touch on Spokane as well, obviating the need to request those
17 records anew. So while James Cloud previously requested 27 categories of records,
18 his new request seeks only 10.

19 _____
⁶ ECF No. 242 (Third Superseding Indictment).

To help the Court easily track what records James Cloud previously sought, how the Court ruled, and what new records are needed (and not), James Cloud prepared a table—complete with pinpoint citations—for ease.

#	Original Request Yakima Division	Court Ruling	Follow-Up Request Spokane Division
1	Jury Plan ⁷	Granted ⁸	None. Clerk's Office already provided this information.
2	Covid-19 Adjustments ⁹	Denied as premature, but free to renew if United States obtains superseding indictment during Covid-19. ¹⁰	Information needed. A Spokane grand jury returned a superseding indictment during Covid-19, making this request relevant.
3	Covid-19-related Orders ¹¹	Denied as premature, but free to renew if United States obtains superseding indictment during Covid-19. ¹²	Information needed. A Spokane grand jury returned a superseding indictment during Covid-19, making this request relevant.
4	AO Forms ¹³	Granted ¹⁴	Information needed. This information is needed from the Spokane division.
5	Jury wheel data analysis ¹⁵	Granted ¹⁶	None. Clerk's Office provided some information already, and is working on fulfilling the request.

⁷ ECF No. 179 at 2 (Cloud Motion – Request #1).

⁸ ECF No. 184 at 2 (Order – Section A).

⁹ ECF No. 179 at 2 (Cloud Motion – Request #2).

¹⁰ ECF No. 184 at 3 (Order – Section B).

¹¹ ECF No. 179 at 2 (Cloud Motion – Request #3).

¹² ECF No. 184 at 3 (Order – Section C).

¹³ ECF No. 179 at 2 (Cloud Motion – Request #4).

¹⁴ ECF No. 184 at 4 (Order – Section D).

¹⁵ ECF No. 179 at 2 (Cloud Motion – Request #5).

¹⁶ ECF No. 184 at 5 (Order – Section E).

#	Original Request Yakima Division	Court Ruling	Follow-Up Request Spokane Division
6	Wheel refill date ¹⁷	Granted ¹⁸	None. Clerk's Office already provided this information.
7	General notice ¹⁹	Granted ²⁰	None. Clerk's Office already provided this information.
8	Purge procedures ²¹	Granted ²²	None. Clerk's Office already provided this information.
9	Purge information ²³	Granted ²⁴	None. Clerk's Office already provided this information.
10	Proportionality calculations ²⁵	Granted ²⁶	None. Clerk's Office already provided this information.
11	Non-response procedures ²⁷	Granted ²⁸	None. Clerk's Office already provided this information.
12	Information on supplemental draw ²⁹	Granted ³⁰	None. Clerk's Office already provided this information.
13	Information on	Granted ³²	None. Clerk's Office already provided

¹⁷ ECF No. 179 at 3 (Cloud Motion – Request #6).

¹⁸ ECF No. 184 at 5 (Order – Section F).

¹⁹ ECF No. 179 at 3 (Cloud Motion – Request #7).

²⁰ ECF No. 184 at 6 (Order – Section G).

²¹ ECF No. 179 at 3 (Cloud Motion – Request #8).

²² ECF No. 184 at 6 (Order – Section H).

²³ ECF No. 179 at 3 (Cloud Motion – Request #9).

²⁴ ECF No. 184 at 6 (Order – Section H).

²⁵ ECF No. 179 at 3 (Cloud Motion – Request #10).

²⁶ ECF No. 184 at 7 (Order – Section I).

²⁷ ECF No. 179 at 3 (Cloud Motion – Request #11).

²⁸ ECF No. 184 at 7 (Order – Section J).

²⁹ ECF No. 179 at 3 (Cloud Motion – Request #12).

³⁰ ECF No. 184 at 7 (Order – Section K).

³² ECF No. 184 at 8 (Order – Section L).

#	Original Request Yakima Division	Court Ruling	Follow-Up Request Spokane Division
	failure-to-submit ³¹		this information.
14	Summons date ³³	Granted ³⁴	Information needed. This information is needed from the Spokane division.
15	Grand jury basis ³⁵	Granted ³⁶	Information needed. This information is needed from the Spokane division.
16	Grand jury ratio ³⁷	Granted ³⁸	Information needed. This information is needed from the Spokane division.
17	Numbers summoned ³⁹	Granted ⁴⁰	Information needed. This information is needed from the Spokane division.
18	Master wheel data ⁴¹	Granted ⁴²	None. Clerk's Office already provided this information.
19	Qualified wheel data ⁴³	Granted ⁴⁴	None. Clerk's Office already provided this information.
20	Status codes ⁴⁵	Granted ⁴⁶	None. Clerk's Office already provided this information.

³¹ ECF No. 179 at 3 (Cloud Motion – Request #13).

³³ ECF No. 179 at 3 (Cloud Motion – Request #14).

³⁴ ECF No. 184 at 8 (Order – Section M).

³⁵ ECF No. 179 at 3 (Cloud Motion – Request #15).

³⁶ ECF No. 184 at 9 (Order – Section N).

³⁷ ECF No. 179 at 4 (Cloud Motion – Request #16).

³⁸ ECF No. 184 at 9 (Order – Section O).

³⁹ ECF No. 179 at 4 (Cloud Motion – Request #17).

⁴⁰ ECF No. 184 at 9 (Order – Section P).

⁴¹ ECF No. 179 at 4 (Cloud Motion – Request #18).

⁴² ECF No. 184 at 10 (Order – Section Q).

⁴³ ECF No. 179 at 4 (Cloud Motion – Request #19).

⁴⁴ ECF No. 184 at 10 (Order – Section Q).

⁴⁵ ECF No. 179 at 4 (Cloud Motion – Request #20).

⁴⁶ ECF No. 184 at 11 (Order – Section R).

#	Original Request Yakima Division	Court Ruling	Follow-Up Request Spokane Division
21	Replaced juror numbers ⁴⁷	Granted ⁴⁸	None. Clerk's Office already provided this information.
22	Replacing juror numbers ⁴⁹	Granted ⁵⁰	None. Clerk's Office already provided this information.
23	Failure-to-appear or submit ⁵¹	Granted ⁵²	None. Clerk's Office already provided this information.
24	Grand juror numbers ⁵³	Granted ⁵⁴	Information needed. This information is needed from the Spokane division.
25	Grand jury data sources ⁵⁵	Granted ⁵⁶	None. Clerk's Office provided some information already, and is working on fulfilling the request.
26	Juror Qualification Forms ⁵⁷	Granted ⁵⁸	Information needed. This information is needed from the Spokane division.
27	Disposition for each juror ⁵⁹	Granted ⁶⁰	Information needed. This information is needed from the Spokane division.

⁴⁷ ECF No. 179 at 4 (Cloud Motion – Request #21).

⁴⁸ ECF No. 184 at 11 (Order – Section S).

⁴⁹ ECF No. 179 at 4 (Cloud Motion – Request #22).

⁵⁰ ECF No. 184 at 11 (Order – Section S).

⁵¹ ECF No. 179 at 5 (Cloud Motion – Request #23).

⁵² ECF No. 184 at 11 (Order – Section S).

⁵³ ECF No. 179 at 5 (Cloud Motion – Request #24).

⁵⁴ ECF No. 184 at 11 (Order – Section T).

⁵⁵ ECF No. 179 at 5 (Cloud Motion – Request #25).

⁵⁶ ECF No. 184 at 12 (Order – Section U).

⁵⁷ ECF No. 179 at 5 (Cloud Motion – Request #26).

⁵⁸ ECF No. 184 at 14 (Order – Section V).

⁵⁹ ECF No. 179 at 5 (Cloud Motion – Request #27).

⁶⁰ ECF No. 184 at 14 (Order – Section W).

1 To allow for James Cloud to meaningfully review whether the Spokane-based
 2 grand jury in his case was comprised from a fair cross-section of the community, he
 3 respectfully asks the Court to grant him access to the following supplemental
 4 materials related to the Spokane grand jury:⁶¹

5 **#2 - Covid-19 adjustments.**⁶² Any policies and procedures enacted for
 6 summoning and enlisting grand jurors due to the Covid-19 pandemic.

7 **#3 - Covid-19-related Orders.** Any Court orders entered for summoning and
 8 enlisting grand jurors due to the Covid-19 pandemic.

9 **#4 - Forms.** Any AO-12 or JS-12 forms created from the jury wheels used to
 10 summon the grand jurors who returned the Third Superseding Indictment. *See* 28
 11 U.S.C. § 1863(a).

12 **#14 - Summons date.** The date grand jurors were summoned in this case.

13 **#15 - Grand jury basis.** The basis (divisional, combined, or entire district) for
 14 the grand jury in this case, as described in Jury Plan Section 4.05(b).

15 **#16 - Division or combined ratio.** If the grand jury is impaneled in combined
 16 divisions or in the entire district, the calculation of the ratio and number of grand
 17 jurors from each division, as described in Jury Plan Section 4.05(b).

18 ⁶¹ Attached as Exhibit A is the Declaration of Jeffrey O. Martin, an expert who specializes in
 19 reviewing jury wheel data. Mr. Martin's declaration provides additional support for the following:
 1) why the requested information is needed; 2) that the requested information is consistent with
 previously-approved requests; and 3) that only a small portion of the information requested
 contains personally-identifiable information, but there are procedures he has used in the past to
 protect it.

⁶² Each numbered request (e.g., **#2** - Covid-19 adjustments) corresponds to the included chart.
 (This explains why the numbers don't begin with #1 or increase in numerical order.)

1 **#17 - *Numbers summoned.*** The number of persons summoned from the
2 Qualified Jury Wheel to be considered as grand jurors in this case.

3 **#24 - *Grand juror numbers.*** The juror numbers (not name or address) for
4 persons selected as potential grand jurors in this case.

5 **#26 - *Juror Qualification Forms.*** The juror qualification and summons
6 forms for persons summoned to potentially become grand jurors in this case.

7 **#27 - *Disposition for each juror.*** The disposition of each summoned potential
8 grand juror in this case as to excusal, deferment, disqualification, or selection, as
9 described in the Jury Plan.

10 Dated: December 3, 2020

11 Federal Defenders of Eastern Washington & Idaho

12 s/ John B. McEntire, IV

13 John B. McEntire, IV, WSBA #39469

14 10 North Post Street, Suite 700

15 Spokane, Washington 99201

16 509.624.7606

17 jay_mcentire@fd.org

Service Certificate

I certify that on December 3, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will notify Assistant United States Attorneys: Thomas J. Hanlon and Richard Burson.

s/ John B. McEntire IV
John B. McEntire, IV, WSBA #39469
10 North Post Street, Suite 700
Spokane, Washington 99201
509.624.7606
jay_mcentire@fd.org